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## 25.1 Court Rules Governing Appeals From Family Division

MCR 5.993(C) states that except as modified by MCR 5.993, Chapter 7 of the Michigan Court Rules governs appeals from the Family Division. Subchapter 7.200 governs appeals to the Court of Appeals, and Subchapter 7.300 governs appeals to the Supreme Court.

The following orders are appealable to the Court of Appeals by right from the Family Division:

- (1) an order of disposition placing a minor under the supervision of the court or removing the minor from the home;
- (3) any order required by law to be appealed to the Court of Appeals; and
- (4) any final order.

MCR 5.993(A)(1), (3) and (4). See MCR 7.202(8)(a)–(b) for a definition of “final judgment” and “final order” in civil and criminal cases.

## 25.2 Appeals by Right in Delinquency Cases\*

### A. Orders of Disposition\*

An order of disposition placing a minor under the supervision of the court or removing the juvenile from the home is appealable by right to the Court of Appeals. MCR 5.993(A)(1).

**NOTE:** There is no requirement in the court rules governing delinquency proceedings that the court advise the juvenile of the right to appeal following an order of disposition placing a minor under the supervision of the court or removing the juvenile from the home. Compare MCR 5.950(C)(1)(c)(i)–(iii) (required advice following “traditional” waiver of jurisdiction).

\*See Forms MC 55 and PC 90.

\*See Chapter 12.

MCL 600.1041; MSA 27A.1041, states that the pendency of an appeal from the Family Division of the Circuit Court in a matter involving the disposition of a juvenile shall not suspend the order unless the court to which the appeal is taken specifically orders the suspension. See also MCR 7.101(H)(4) (criminal judgment executed immediately).

An appeal by right in a civil case must be filed within 21 days after the judgment or order appealed from, 21 days after entry of an order denying a post-judgment motion if the motion was filed within the initial 21-day period, or within another time provided by law. MCR 7.204(A)(1)(a)–(c). An application for a delayed appeal from an order of the Family Division in a matter involving the disposition of a juvenile shall be filed within 6 months after entry of the order. MCL 600.1041; MSA 27A.1041.

\*See Chapter 14 (probation violations in delinquency cases).

## B. Orders Revoking Juvenile Probation\*

Because it is an order removing the juvenile from his or her home, a juvenile may appeal as of right to the Court of Appeals an order by the Family Division revoking juvenile probation and committing the juvenile to an institution or agency. See MCR 5.993(A)(1). However, if the juvenile did not appeal the initial disposition, errors in the initial proceeding may not be raised on appeal of the probation revocation. *In re Madison*, 142 Mich App 216, 219–20 (1985), citing *People v Pickett*, 391 Mich 305, 316 (1974) (appeal of probation violations in criminal cases).

## 25.3 Appeals by Leave in Delinquency Cases

All orders not listed in MCR 5.993(A) are appealable to the Court of Appeals by leave, including interlocutory appeals. MCR 5.993(B).

\*See Chapters 16 – 21.

## 25.4 Appeals in Designated Cases\*

Designated proceedings are criminal proceedings that occur within the Family Division of the Circuit Court. Conviction has the same effect and liabilities as if it had been obtained in a court of general criminal jurisdiction. MCL 712A.2d(7); MSA 27.3178(598.2d)(7), and MCR 5.903(D)(9).

\*See Sections 20.40 – 20.43 (procedures for appeals by right and by leave in criminal cases).

Adult criminal defendants have an appeal as of right to the Court of Appeals following conviction, except that an appeal by an accused who pleads guilty or nolo contendere shall be by leave of the court. Const 1963, art 1, § 20, MCL 770.3(1); MSA 28.1100(1), and MCL 600.308 and 600.309; MSA 27A.308 and 27A.309.\*

**NOTE:** The appellate rights of juveniles in designated cases mirror those of adults. See MCR 5.955(C), which provides that MCR 6.425 applies to designated proceedings. MCR 5.993 applies only to delinquency and child protective proceedings. MCR 5.901(B)(1).

## 25.5 Appeals in “Traditional” Waiver Cases\*

\*See Chapter 24.

Juveniles subject to “traditional” waiver proceedings have an appeal as of right to the Court of Appeals following conviction, except that an appeal by an accused who pleads guilty or nolo contendere shall be by leave of the court. Const 1963, art 1, § 20, MCL 770.3(1); MSA 28.1100(1), and MCL 600.308 and 600.309; MSA 27A.308 and 27A.309.\*

The juvenile may appeal by right to the Court of Appeals an order granting the prosecutor’s motion to waive jurisdiction following “traditional” waiver proceedings. See MCR 5.950(C)(1)(c)(ii).\*

\*See Sections 20.40 – 20.43 (procedures for appeals by right and by leave in criminal cases).

\*See Section 24.23.

**NOTE:** It does not appear that the prosecuting attorney has an appeal by right when the court denies the motion to waive jurisdiction. Because there is no statute or court rule providing an appeal by right, the order denying the prosecutor’s motion is not required by law to be appealed to the Court of Appeals pursuant to MCR 5.993(A)(3). In addition, the order is not a final order of the Family Division appealable by right pursuant to MCR 5.993(A)(4). See also *In re Fultz*, 211 Mich App 299, 301 (1995), rev’d on other grounds 453 Mich 937 (1996) (following affirmance by the circuit court, the prosecutor appealed to the Court of Appeals by leave granted the probate court’s dismissal of the charges against defendant).

## 25.6 Appeals in “Automatic” Waiver Cases\*

\*See Chapters 22 – 23.

Juveniles subject to “automatic” waiver proceedings have an appeal as of right to the Court of Appeals following conviction, except that an appeal by an accused who pleads guilty or nolo contendere shall be by leave of the court. Const 1963, art 1, § 20, MCL 770.3(1); MSA 28.1100(1), and MCL 600.308 and 600.309; MSA 27A.308 and 27A.309.\* The juvenile may also appeal as of right to the Court of Appeals from the imposition of a sentence of incarceration after a finding that the juvenile violated probation. MCR 6.933(C).

\*See Sections 20.40 – 20.43 (procedures for appeals by right and by leave in criminal cases).

## 25.7 Standards of Review

### A. In Delinquency Cases

All appeals from the Family Division shall be on a written transcript of the record made in the Family Division or on a record settled and agreed to by the parties and approved by the court. An appeal shall not be tried de novo. MCL 600.866(1); MSA 27A.866(1).

However, issues of law are reviewed de novo. *United States v Griffith*, 17 F3d 865, 877 (CA 6, 1994), and *People v Carpentier*, 446 Mich 19, 60, n 19 (1994).

## B. In Designated Cases

There have been no appellate decisions establishing standards of review for the decision to designate the case for criminal trial in the Family Division, or the decision to impose a juvenile disposition or adult sentence following conviction in designated cases. However, the standards applicable to criminal proceedings for adults will presumably apply to issues arising during plea proceedings, at trial, and during hearings to impose adult sentences in designated proceedings.

## C. In “Traditional” Waiver Cases

Where the prosecuting attorney appeals, denial of a motion to waive juvenile jurisdiction is reviewed under a bifurcated standard. Factual findings are reviewed for clear error, while the decision to waive or retain jurisdiction is subject to an abuse of discretion standard. *In re Fultz*, 211 Mich App 299, 305–06 (1995), rev’d on other grounds 453 Mich 937 (1996).

Where the juvenile appeals, an order granting a motion to waive jurisdiction will be affirmed where the court's findings, based on substantial evidence and thorough investigation, show either that the juvenile is not amenable to treatment or that, despite his potential for treatment, the nature of the juvenile’s difficulty is likely to render the juvenile dangerous to the public if released at age 19 or 21, or to disrupt the rehabilitation of other children in the program. *People v Dunbar*, 423 Mich 380, 387 (1985).

\*See Section 24.19 for a list of the current criteria for second-phase hearings.

**NOTE:** The standards of review established in *Dunbar* are based upon the criteria for second-phase hearings that were in place prior to the 1996 amendment of MCL 712A.4; MSA 27.3178(598.4). See 1996 PA 262 and *People v Whitfield (After Remand)*, \_\_\_ Mich App \_\_\_ (1998). Because the criteria in the amended statute place emphasis on the seriousness of the offense rather than the juvenile’s amenability to treatment, it is likely that the *Dunbar* standards of review will be changed by the Court of Appeals to conform to the new statutory requirements. \* The Court of Appeals may choose to use the more general standard established in *Fultz* for appeals by both prosecutors and juveniles.

## D. In “Automatic” Waiver Cases

The standard for appellate review of a circuit court's decision to sentence the juvenile as an adult or to place the juvenile on probation and commit the juvenile to the Family Independence Agency is complex:

- F the circuit court's findings regarding the factors of MCL 769.1(3); MSA 28.1072(3), are reviewed using a “clearly erroneous” standard;
- F the circuit court’s decision to sentence the juvenile as an adult or to commit the juvenile is reviewed for an abuse of discretion; and

- F the sentence itself will be reviewed for an abuse of discretion under the proportionality standard\* of *People v Milbourn*, 435 Mich 630 (1990).

\*See Section 20.10 for a discussion of the proportionality standard.

*People v Lyons (On Remand)*, 203 Mich App 465, 467–68 (1994), and *People v Passeno*, 195 Mich App 91, 103–04 (1992).

### E. “Harmless Error” Test

The “harmless error” test applies to corrections of error in both juvenile delinquency and criminal proceedings. MCR 5.902(A), MCR 2.613(A), and MCL 769.26; MSA 28.1096. For nonconstitutional errors, the test is whether the error resulted in a “miscarriage of justice,” MCL 769.26; MSA 28.1096, or was “inconsistent with substantial justice,” MCR 2.613(A). For constitutional errors, see *People v Mateo*, 453 Mich 203, 206 (1996).

## 25.8 Prosecutor’s Right to Appeal

### A. In Criminal Cases

The scope of the prosecution's right of appeal in criminal cases is explained in MCL 770.12; MSA 28.1109. MCR 7.203(E). A prosecutor has no right to appeal outside the express provisions of that statute. *People v Cooke*, 419 Mich 420, 426 (1984). MCL 770.12; MSA 28.1109, authorizes prosecutorial appeal from orders as long as the prohibition against double jeopardy is not violated.

### B. In Delinquency Cases

The prosecuting attorney, as petitioner in a delinquency case, may appeal to the Court of Appeals by right from the Family Division:

- (1) an order of disposition placing a minor under the supervision of the court or removing the minor from the home;
- (3) any order required by law to be appealed to the Court of Appeals; and
- (4) any final order.

MCR 5.993(A)(1), (3) and (4).

However, as in criminal cases, the prosecuting attorney may not appeal a “not guilty” verdict in a delinquency case. See 1988 Staff Comment following MCR 5.993, which states that the petitioner does not have the right to request a review of findings and orders issued after jeopardy has attached in a delinquency proceeding.

